



Mary McManus
Federal Public Affairs
Director

Suite 700
900 19th Street, N.W.
Washington, DC 20006
Tel: 202-530-7090
Fax: 202-530-7007
marymcmanus@lucent.com

October 28, 1996

RECEIVED

OCT 28 1996

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Re: WT Dkt. 96-198 - Implementation of Section 255 of the
Telecommunications Act of 1996

Dear Mr. Caton:

Enclosed please find an original and five (5) copies of Lucent Technologies Comments for filing in the above-referenced proceeding. Also enclosed is a copy to be stamped and returned for our files.

Please do not hesitate to contact me should there be any questions.

Sincerely,

Mary McManus

No. of Copies rec'd
List ABCDE

OKS

Before the
Federal Communications Commission
Washington, D. C. 20554

RECEIVED

OCT 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 255 of the)	
Telecommunications Act of 1996)	
)	WT Docket 96-198
Access to Telecommunications Services)	
Telecommunications Equipment, and)	
Customer Premises Equipment)	
By Persons with Disabilities)	

COMMENTS OF LUCENT TECHNOLOGIES INC.

Gerard G. Nelson
Government Affairs Director
Consumer Products
Lucent Technologies Inc.
5 Wood Hollow Road
Parsippany, New Jersey 07054

October 28, 1996

TABLE OF CONTENTS

	<u>PAGE</u>
<u>SUMMARY</u>	i
Policy statement outlining the Commission's approach to adjudicating complaints filed under Section 255 of the Telecommunications Act of 1996.	3
All telecommunications and customer premises equipment marketed in the United States is subject to the obligations imposed by Section 255. The party introducing equipment into the marketplace in its final form should be responsible for compliance with these obligations.	7
The Commission and Access Board should focus on the functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information in developing the Accessibility Guidelines required by the 1996 Act.	10
Manufacturers are obligated to incorporate features enhancing the accessibility of their equipment only to the extent that it is "readily achievable" to do so.	11
The Commission, in evaluating whether equipment is accessible to the extent "readily achievable" should not impair the robustly competitive marketplace fostered by the Commission's pro-competitive policies.	15
The Accessibility Guidelines should identify barriers to accessibility and known solutions to those barriers and recommend priorities for removing those barriers.	17

SUMMARY

The Telecommunications Act of 1996 requires that manufacturers of customer premises equipment (“CPE”) design, develop, and fabricate their products so that they are readily accessible to and usable by individuals with disabilities to the extent that it is readily achievable (a term from the Americans with Disabilities Act of 1990 (“ADA”) that means with little difficulty or expense). The Architecture and Transportation Barriers Compliance Board (“Access Board” -- an independent federal agency charged with promulgating guidelines on accessibility matters) and the Federal Communications Commission (“Commission”) are charged with developing guidelines for the accessibility of CPE, and the Commission is given exclusive authority to resolve complaints.

The Access Board has convened an advisory committee comprising individuals from industry and organizations representing individuals with disabilities to make recommendations about the content of the accessibility guidelines it is obligated to publish in mid-1997. In addition, the Commission has instituted a proceeding to obtain public comment about issues related to the accessibility guidelines and how the Commission should discharge its exclusive authority to resolve complaints about the accessibility of equipment and services.

Although it is premature at this time for the Commission to promulgate rules regarding the accessibility of telecommunications and customer premises equipment, the Commission should issue a policy statement outlining its approach to adjudicating

complaints filed under the Act. Such a policy statement would provide all parties a reasonable degree of certainty.

All telecommunications and customer premises equipment marketed in the United States is subject to the obligations imposed by Section 255. The party introducing equipment into the marketplace in its final form should be responsible for assuring compliance with these obligations. Manufacturers of CPE marketed in more than one country should not have a reduced obligation with respect to the accessibility of equipment marketed in the United States.

The Commission and the Access Board should focus on the functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information in developing the Accessibility Guidelines required by the 1996 Act. Other aspects of the ADA definition of disabilities -- e.g. HIV infection -- are not generally relevant to the accessibility of CPE.

In resolving complaints under Section 255, the Commission should recognize that manufacturers are obligated to incorporate features enhancing the accessibility of their equipment only to the extent that it is "readily achievable" to do so and should look for guidance about the meaning of the term "readily achievable in the context in which it is used in the ADA.

The Commission, in evaluating whether equipment is accessible to the extent "readily achievable" should not impair the robustly competitive marketplace fostered by the Commission's pro-competitive policies. The Commission must consider whether the costs of incorporating additional accessibility features in an item of equipment could have

resulted in a financially driven not to introduce the equipment at all and should not impose more stringent accessibility standards on products offered by large firms than are imposed on small firms.

The Accessibility Guidelines to be developed by the Access Board, in conjunction with the Commission, should identify barriers to accessibility and known solutions to those barriers and recommend priorities removing those barriers. Further opportunities for public comment should be provided before the Guidelines are finalized and utilized by the Commission in resolving complaints.

Before the
Federal Communications Commission
Washington, D. C.

In the Matter of)	
)	
Implementation of Section 255 of the)	
Telecommunications Act of 1996)	
)	
Access to Telecommunications Services,)	WT Docket 96-198
Telecommunications Equipment, and)	
Customer Premises Equipment)	
By Persons with Disabilities)	

COMMENTS OF LUCENT TECHNOLOGIES INC.

Pursuant to Section 1.415 of the Commission's Rules, Lucent Technologies Inc. ("Lucent") respectfully submits the following Comments in response to the *Notice of Inquiry*, FCC 96-382, released September 19, 1996 ("Notice"), seeking comment on issues related to the provisions of Section 255 of the Telecommunications Act of 1996 ("1996 Act")¹ regarding the accessibility of telecommunications services, telecommunications equipment, and customer premises equipment to persons with disabilities. Lucent manufactures a broad array of customer premises equipment and telecommunications equipment and is a major supplier of such equipment in the United States. Its telecommunications equipment is used by local, long distance, and wireless carriers to provide telecommunications services, and its customer premises equipment ranges from simple single-line residential telephones to complex business communications systems.

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

Lucent has participated in various proceedings before the Commission regarding the accessibility of customer premises equipment products for individuals with disabilities affecting hearing. In addition, Lucent is participating actively in the work of the Telecommunications Access Advisory Committee (“TAAC”) established by the Architectural and Transportation Barriers Compliance Board Notice (“Access Board”) for the purpose of making recommendations regarding accessibility guidelines for telecommunications equipment and customer premises equipment.²

As it affects manufacturers, Section 255(b) of the 1996 Act requires manufacturers of telecommunications and customer premises equipment to “ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.” If such accessibility is not readily achievable, manufacturers must ensure that the equipment is compatible with “existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.” The term “readily achievable” has the meaning given to it by Section 301(9) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12181(9). Section 255(e) further requires the Access Board, in conjunction with the Commission, to develop guidelines for equipment accessibility (“Accessibility Guidelines”) within 18 months of enactment. Section 255(f) of the 1996 Act vests with the Commission “exclusive jurisdiction” with

² Notice, 61 Fed. Reg. 13813 (March 28, 1996). Specifically, the TAAC was charged with making recommendations on the following issues: (1) types of equipment to be covered by the guidelines; (2) barriers to the use of such equipment by persons with disabilities; (3) solutions to such barriers, if known, categorized by disability; and (4) the contents of the guidelines.

respect to complaints under Section 255. Lucent's Comments on the issues raised by the Commission in its *Notice* follow.

Although it is premature at this time for the Commission to promulgate rules regarding the accessibility of telecommunications and customer premises equipment, the Commission should issue a policy statement outlining its approach to adjudicating complaints filed under the Act.

The Access Board, at the time it promulgated its ADA Accessibility Guidelines for Buildings and Facilities ("ADAAG"), had the benefit of a decade or more of experience in discharging similar responsibilities required by the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355. Moreover, in the case of the construction of accessible buildings and facilities, the affected industries had a similar period in which to gain experience in constructing facilities to meet the requirements of the predecessor to the ADAAG. With the exception of hearing aid compatibility and the operation of Telecommunications Relay Services by telecommunications carriers, no similar base of experience exists related to the accessibility of telecommunications services and equipment.³ In view of the uncertainty that necessarily results from this lack of experience, the promulgation of regulations would be premature and should be considered at a later time when all parties have had an opportunity to gain needed experience regarding the accessibility of telecommunications services and equipment.

Although the promulgation of regulations would be premature, the Commission undoubtedly will be faced with complaints that will need to be resolved. Thus, a policy

³ For example, the Access Board's Notice announcing the establishment of its Advisory Committee states that the Committee will be charged with identifying the barriers to the use of telecommunications and

statement outlining how the Commission will approach the resolution of complaints under Section 255 of the 1996 Act would be useful to all concerned. Lucent recommends that the policy statement reflect the following policy considerations.

Commission policy should encourage the prompt, informal resolution of complaints relating to the degree to which a telecommunications or customer equipment product is accessible to and usable by individuals with disabilities. Generally, it would be most productive for all parties if each complaint resulted in an exchange of information about an unmet need for the removal of a barrier to the access to and use of telecommunications services or telecommunications or customer premises equipment. Lucent recommends that complaints about barriers to accessibility be directed initially to the manufacturer or service provider so that the manufacturer or service provider may respond to the unmet need of its customer. Appropriate responses may include: identifying a product designed to incorporate a solution to the barrier to accessibility that is the subject of the complaint; providing information about plans to include a solution to the barrier in future products or services; or informing the individual submitting the complaint that incorporating the solution to the barrier to accessibility in the product or service is not readily achievable. In addition, Commission policy should encourage service providers, manufacturers, and organizations representing the interests of individuals with disabilities to establish a forum to facilitate the exchange of information regarding solutions to barriers to accessibility.

customer premises equipment by persons with various types of disabilities and the solutions to such barriers, if known, categorized by type of disability. . . . (Emphasis added.)

In the event that good faith attempts to resolve complaints informally are unsuccessful, the Commission has exclusive jurisdiction with respect to adjudicating complaints under Section 255. In discharging that exclusive responsibility, the Commission should announce, in advance, its approach for resolving complaints. Lucent recommends that the Commission's policy reflect the following.

First, Commission policy should require that complainants afford the manufacturer or service provider involved a reasonable opportunity -- for example, sixty days following receipt of the complaint -- to resolve the matter informally and accept only those complaints that have not been resolved on an informal basis.

Second, the Commission should consider only complaints relating to the accessibility of equipment for which design activities began following the publication of the Accessibility Guidelines developed by the Access Board in conjunction with the Commission. Generally, equipment design activities commence approximately 24 months prior to the first introduction of new customer premises equipment into the marketplace, and, in the case of telecommunications equipment, even earlier. It would be unrealistic to expect that equipment manufacturers would be able to consider those Accessibility Guidelines in their equipment designs prior to, or even immediately following, the time those Guidelines are published. It would be reasonable for the Commission to establish a six month period for manufacturers to: (i) understand the Guidelines; (ii) develop a process for evaluating the accessibility of its product designs; (iii) identify barriers to accessibility; (iv) incorporate solutions to those barriers to the

extent that they are readily achievable;⁴ (v) communicate that process to its equipment designers; and (vi) train them in its use. For these reasons, the Commission should adopt a policy that complaints under Section 255 will be considered only in connection with equipment for which design activities began at least six months after the publication of the Guidelines.

Third, the Commission, in resolving complaints under Section 255, should favorably consider the efforts of manufacturers, after consultation with representatives of individuals with a variety of disabilities, to adopt and utilize a process for evaluating the accessibility of product designs in light of the barriers to accessibility and known solutions identified in the Guidelines, and to incorporate those accessibility features that are readily achievable at the commencement of design activities. The Department of Justice (DOJ), in the analysis section of its final rule implementing Title III of the ADA, urged operators of public accommodations to “establish procedures” for conducting ongoing assessment of their compliance with the ADA’s requirements for the removal of barriers to accessibility when readily achievable and recommended that these procedures include “appropriate consultation with individuals with disabilities or organizations representing them.” DOJ, Final Rule, 56 Fed. Reg. 35544, at 35569. The DOJ further noted that a “serious effort at self-assessment” can diminish the “threat of litigation.” *Id.* Commission adoption of a rebuttable presumption that the products of manufacturers who have utilized such a process to assess the accessibility of their product designs comply with the requirements of Section 255 will encourage manufacturers to consider the

⁴ Lucent’s views regarding the application of the term “readily achievable” to telecommunications and customer premises equipment will be discussed separately below.

accessibility aspects of equipment designs at the outset of design activities -- the point at which solutions to barriers to accessibility can be most easily incorporated in equipment designs.

Fourth, it should be the policy of the Commission that, in evaluating complaints under Section 255, it will consider the availability of technological solutions to accessibility barriers and the cost of utilizing those technological solutions as they existed at the time design activities commenced for equipment that is the subject of a complaint. If the rate of technological development continues at its current pace, some solutions to accessibility barriers are likely to be more technologically feasible or cost effective at the time a product is introduced into the marketplace than they were at the time design activities commenced. It would be unreasonable to expect equipment to incorporate technological solutions to accessibility barriers that were developed or became cost-effective after equipment design activities commenced.

Fifth, it should be the policy of the Commission to consider only those complaints which: (i) show that the complaint could not be resolved on an informal basis directly with the manufacturer; (ii) state with particularity the barrier to accessibility associated with the equipment that is the subject of the complaint; (iii) state a specific known solution to that barrier; and (iv) demonstrate that incorporating that known solution in the design of the equipment that is the subject of the complaint would have been readily achievable at the time design activities for that product commenced.

All telecommunications and customer premises equipment marketed in the United States is subject to the obligations imposed by Section 255. The

party introducing equipment into the marketplace in its final form should be responsible for assuring compliance with these obligations.

In its *Notice*, the Commission notes that all equipment marketed in the United States must meet applicable technical and operational requirements, but questions whether the “same approach should be adopted for accessibility standards. . . .” *Notice of Inquiry, supra*, at Paragraph 11. This question presumes the existence of “accessibility standards” applicable to specific categories of telecommunications or customer premises equipment, analogous to the Commission’s technical and operational requirements. The accessibility obligations imposed on manufacturers by Section 255 are simply not analogous to technical and operational requirements.

First, there are many different types of disabilities that must be considered in determining how the design of any specific item of equipment can be made to comply with Section 255. In contrast, generally, a manufacturer need only determine in which of several operating environments a category of equipment will be used in order to determine which technical and operational requirements are relevant.

Second, Section 255(b) obligates manufacturers to assure that their equipment is “designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.” (Emphasis added.) There is no such limitation on the requirement that manufacturers of equipment subject to the Commission’s technical and operational requirements comply with those standards. Thus, although all telecommunications and customer premises equipment marketed in the United States is subject to Section 255, it is, to say the least, premature to discuss the obligations of manufacturers in terms of “accessibility standards.”

The fact that a manufacturer markets its products in nations other than the United States ought not affect the obligations of that manufacturer to comply with Section 255 with respect to equipment marketed in the United States. As long as the Commission evaluates the degree to which equipment is considered accessible in accordance with performance-based, rather than technical, criteria, it is not probable that compliance with a technical accessibility requirement imposed by another nation would detract from the accessibility of that product if it were to be marketed in the United States.⁵

The party introducing equipment into the marketplace in its final form should be responsible for assuring compliance with Section 255. In the case of customer premises equipment, this would generally be the firm under whose brand name the equipment is marketed. Where a manufacturer designs, develops, and fabricates equipment it introduces into the marketplace under its own brand name, the responsibility for compliance with Section 255 is clear. In other cases, such as contract manufacturing (where a firm fabricates equipment designed, developed, and marketed by another firm), private label arrangements (where a firm sets specifications for, and markets under its own name, equipment designed, developed, and fabricated by another firm), or license agreements (where a firm manufactures and markets equipment designed and developed by another firm), holding the firm that introduces the product in its final form into the marketplace responsible for compliance with Section 255 will provide a useful degree of

⁵ For example, a performance-based accessibility criterion would specify that operating labels on customer premises equipment should have a high degree of contrast between the label letters or numbers and the background, while an analogous technical criterion would specify that only white lettering on a black background would constitute an accessible operating label. In this case, a technical criterion imposed by another nation specifying white labels on a black background would certainly meet a performance-based criterion specifying a high degree of contrast between lettering and background.

certainty to other interested parties. Of course, the parties to arrangements where the design, development, fabrication, and marketing of equipment involve two or more firms are free to apportion, by contract among themselves, liability for the consequences of equipment found not to be in compliance with the obligations of Section 255.

The Commission and the Access Board should focus on the functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information in developing the Accessibility Guidelines required by the 1996 Act.

Section 255(a) of the 1996 Act incorporates by reference the definition of “disability” from the ADA. The ADA uses a three-prong definition:

The term “disability” means, with respect to an individual --

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

42 U.S.C. 12102(2)(A)-(C). Although the 1996 Act incorporates the ADA definition, it uses that definition in a different way than it is used in the ADA. The ADA, which is at its core an anti-discrimination statute, uses its definition of disability to identify those individuals who are entitled to the protections of the statute. The second and third prongs of the definition -- a record of an impairment or being regarded as having an impairment - - were included in the ADA to extend its anti-discrimination provisions to individuals who, although they do not have an impairment which limits a major life activity, are, nevertheless, potential victims of discrimination on the basis of at one time having had an impairment or being regarded as having an impairment. House Committee on the

Judiciary, H. Rep. No. 485, Part 3, 101st Cong., 2d Sess. (1990), at pp 29-30. The 1996 Act uses the term to describe the types of impairments that manufacturers of telecommunications and customer premises equipment are to consider when undertaking to make their equipment accessible. In this context, the second and third prongs of the ADA definition of disability appear to be largely irrelevant. Inasmuch as the obligations of Section 255 apply to equipment that is marketed generally to all -- those with and without disabilities -- the Commission should focus its attention on the first prong and the additional guidance provided by the Congress that it intended the definition principally to cover individuals with functional limitations of hearing, vision, movement, manipulation, speech, or interpretation of information. See Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 23, 104th Cong., 1st Sess. (1995), p 74; House Committee on the Judiciary, *supra*, at p 29.

In resolving complaints under Section 255, the Commission should recognize that manufacturers are obligated to incorporate features enhancing the accessibility of their equipment only to the extent that it is "readily achievable" to do so.

Section 255(a) (2) incorporates by reference the term "readily achievable" from the ADA where it is defined as "easily accomplishable and able to be carried out without much difficulty or expense."⁶ 42 U.S.C. 12181(9). The Commission seeks comments on

⁶ The ADA further provides that "in determining whether an action is readily achievable, factors to be considered include --

- (A) the nature and cost of the action needed under this Act;
- (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
- (C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

the application of this definition in the context of telecommunications equipment and services. *Notice of Inquiry, supra*, at Paragraph 16. In view of its origins, it is appropriate to look for guidance about the meaning of the term “readily achievable” in the context in which it is used in the ADA. There, the term “readily achievable” is used to describe the limits on the obligation of operators of public accommodations to remove architectural and communications barriers that are structural in nature. Barrier removal is limited to those circumstances where it can be accomplished “easily and without much difficulty or expense.” The term addresses “the degree of ease or difficulty that the business operator would experience in removing a barrier. . . .” House Committee on Energy and Commerce, H. Rep. No. 485, Part 4, 101st Cong., 2d Sess. (1990), at pp 56-57 (“Commerce Report”). Examples of the types of actions that would be considered readily achievable include “the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and Braille markings on elevator control lights, and similar modest adjustments.” House Committee on Education and Labor, H. Rep. No. 485, Part 2, 101st Cong., 2d Sess. (1990), at p 110. Thus, the ADA requires only that an operator of a public accommodation take relatively simple, inexpensive actions that would increase the accessibility of the public accommodation, even if the end result is something short of full accessibility. The DOJ regulations implementing the provisions of Title III of the ADA that require the removal of architectural barriers in existing facilities, where readily achievable, provide numerous

(D) the type of operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.”

examples of steps to remove barriers. 28 C.F.R. 36.304(a) and (b). None of these examples are steps which would constitute more than a small fraction of the operating expenses of the public accommodation. Moreover, the DOJ, by urging, in its Regulations, operators of public accommodations to follow its recommended priorities for barrier removal, clearly recognizes that all barriers may not be removed at once. 28 C.F.R. 36.304(c).

Applying this definition and guidance regarding the term “readily achievable” from the ADA to manufacturers of telecommunications and customer premises equipment, would require manufacturers to design, develop, and fabricate equipment incorporating analogous simple and inexpensive features that increase the usability of the equipment by individuals with disabilities. It would be inconsistent with the definition and application of the ADA term “readily achievable” to require manufacturers of telecommunications or customer premises equipment to incorporate accessibility features if doing so would add materially to the cost of manufacturing a product. The use of highly contrasting colors for numbers or letters and their background, making buttons as large as practical in view of the size of the equipment, and making wireline handsets that can be used by individuals with hearing aids equipped with telecoils are all examples of accessibility features that clearly would be “readily achievable.” Other technically feasible features -- voice recognition, for example -- would not be required on simple, low cost products because the degree of difficulty or expense of providing them currently would exceed the “readily achievable” threshold.

The Commission also sought comment on the impact that multiple opportunities for enhancing the accessibility of a particular piece of equipment should have on assessing the obligations of manufacturers under Section 255. *Notice of Inquiry, supra*, at Paragraph 22. The DOJ addressed a comparable issue in addressing the obligations of operators of public accommodations to remove barriers to accessibility to the extent that it was “readily achievable” to do so and determined that, under the ADA, it was “appropriate to consider the cost of other barrier removal actions as one factor in determining whether a measure is readily achievable.” DOJ, Final Rule, 56 Fed. Reg. 35544, at 35554. Thus, in evaluating whether a particular piece of telecommunications or customer premises equipment is accessible to and usable by individuals with disabilities, the Commission should not consider the incorporation of multiple accessibility features in isolation from one another. If a manufacturer incorporates features that resolve one identified barrier to accessibility, and the incorporation of features resolving additional barriers would involve efforts that, in total, would exceed the “readily achievable” standard -- by, for example, materially increasing the cost of production -- incorporation of the additional accessibility features on that particular piece of equipment would not be required.

In evaluating whether customer premises equipment is accessible to and usable by individuals with disabilities, the Commission should recognize two essential facts: first, that the design of individual items of equipment to incorporate solutions to a wide variety of barriers is impractical⁷ and, second, that customer premises equipment generally is

⁷ For example, individuals with some types of impaired mobility may benefit from a keypad that is larger than the one normally used with telephones, while others may benefit from a keypad that is smaller than

used by an individual or a small known group of individuals, is selected to meet the unique needs of specific individuals or small groups of known individuals, including individuals with disabilities, and obtained from among a wide variety of products in the marketplace. Thus, the Commission should not view the solutions to accessibility barriers incorporated in a given product in isolation from the solutions incorporated in other products available in the marketplace.

In addition, the DOJ regulations implementing the ADA do not require operators of public accommodations to modify their policies, practices, or procedures where “the modification would fundamentally alter the nature of the [public accommodation’s] goods, services, facilities. . . .” 28 C.F.R. 36.302. Likewise, telecommunications and customer premises equipment manufacturers should not be required to add accessibility features if doing so would alter fundamentally the nature of the equipment. For example, a manufacturer of a very small communications device intended to meet a market need for such small devices would not be required to incorporate accessibility features -- for example, large control buttons or visual display on a wrist-watch sized paging device -- that would require enlarging the size of the device, thereby altering the fundamental characteristic of “smallness”. Similarly, manufacturers ought not be required to incorporate accessibility features that would materially limit the mass market appeal -- and hence the volume of sales -- of a product in the general marketplace. Incorporating accessibility features that would so limit the appeal of a product would have the effect of

the keypad normally used. The impracticality of designing a single product with both “solutions” to impaired mobility is obvious.

changing a mass market product into an assistive device of limited application -- thus altering a fundamental characteristic of the product.

The Commission, in evaluating whether equipment is accessible to the extent “readily achievable” should not impair the robustly competitive marketplace fostered by the Commission’s pro-competitive policies.

The Commission seeks comment on the relationship between the financial resources of a corporate entity and assessments of the extent to which those financial resources are relevant to product design decisions regarding accessibility. *Notice of Inquiry, supra*, Paragraphs 18-19. The Congress addressed this issue when enacting the ADA. The impact of the readily achievable barrier removal obligations in the ADA were not intended to result in corporate decisions to close neighborhood stores or eliminate jobs. When evaluating whether a specific barrier removal action was “readily achievable,” courts were instructed to consider “whether the local store was threatened with closure by the parent or is faced with job loss. . . .” House Committee on the Judiciary, H. Rep. No. 485, Part 3, 101st Cong., 2d Sess. (1990), at p 55. The Congress recognized the plain fact that, regardless of the financial resources of a corporate entity, decisions related to local operations would inevitably reflect the financial performance of those local operations.

In assessing the relationship between the financial resources of a corporate entity and decisions related to equipment designs, the Commission must similarly bear in mind that decisions related to introducing new products or continuing existing ones inevitably reflect the financial performance of those individual products. For manufacturers,

individual products are “units of decision,” analogous to the local store operations the Congress considered when enacting the ADA. Regardless of the size or financial resources of a corporate parent, individual product management teams, like managers of local retail store operations, are provided limited financial resources, and decisions to form such teams to invest in developing a new or innovative technology are largely driven by profit margin projections. The Commission, in evaluating whether a given product adequately incorporates readily achievable accessibility features, must consider whether the costs of incorporating additional features reasonably could have resulted in a financially driven decision not to introduce the product at all (analogous to a decision to close a local retail store that does not meet financial targets that was considered in enacting the ADA and promulgating its implementing regulations).

In addition, the Commission should not impose more stringent accessibility standards on products offered by large firms than are imposed on small firms. This would inevitably result in the products without accessibility features being marketed by smaller firms at lower prices than the products with accessible features marketed by larger firms, placing the latter at a significant disadvantage in a competitive marketplace. This marketplace disadvantage will, inevitably, result in reduced profit margins for the entities being held to a higher accessibility standard and will place in jeopardy both the continued offering of those products by larger firms and their willingness to form new product teams and invest in the development of new products. Ultimately, this would result in the telecommunications and customer premises equipment industries, now

renowned for a rapid pace of technological development, losing their momentum for technology innovation and the diversity of its product offerings.

The Accessibility Guidelines to be developed by the Access Board, in conjunction with the Commission, should identify barriers to accessibility and known solutions to those barriers and recommend priorities removing those barriers.

The Access Board convened an advisory committee, the Telecommunications Access Advisory Committee (TAAC), to advise the Board on the development of the Accessibility Guidelines that the 1996 Act requires the Access Board, in conjunction with the Commission, to develop. Specifically, the TAAC has been charged with advising the Board and the Commission about (i) the types of equipment to be covered by the guidelines, (ii) barriers to the use of such equipment by persons with disabilities, (iii) solutions to such barriers, if known, categorized by disabilities, (iv) research on such barriers, and (v) the contents of the guidelines. Access Board Notice, *supra*, at p 13814. This committee, comprising representatives from organizations representing individuals with various types of disabilities, academic organizations engaged in research related to disability issues, and manufacturers of telecommunications and customer premises equipment, provides a significant opportunity to identify the barriers to the use of such equipment by individuals with disabilities and to inform manufacturers about known solutions to those barriers.

The Access Board and Commission should ensure that the work of this committee is focused on accomplishing this identification of barriers and solutions. In addition, the Access Board and Commission should seek the assistance of those representing individuals with disabilities in prioritizing the removal of those specific identified

barriers. Establishing such priorities, which should be incorporated as a recommendation in the Accessibility Guidelines, would be of assistance to manufacturers as they evaluate the accessibility of their product designs and incorporate those accessibility features that are readily achievable and would be consistent with the DOJ's prioritized approach to barrier removal by public accommodations. DOJ, Final Rule, 56 Fed. Reg. 35544, at 355569 and 28 C.F.R. 36.304(c).

Finally, the TAAC should utilize the expertise of its participating organizations representing individuals with disabilities and other organizations engaged in research related to disability issues to develop information about compatible "existing peripheral devices and specialized customer premises equipment commonly used by individuals with disabilities. . . ." This information should include descriptions of those peripheral devices and specialized customer premises equipment, the type of interface with telecommunications services or other customer premises equipment they employ, and the extent to which each type of equipment is used by individuals with disabilities.

At the conclusion of the pleading cycles in response to this Notice, the Commission should evaluate the pleadings of all parties in light of its exclusive responsibility for resolving complaints under Section 255, state its tentative conclusions regarding the questions it raised in the Notice, and afford interested parties a further opportunity to comment on the Commission's tentative conclusions. Using the information derived from the pleadings in this proceeding, the Commission should actively participate with the Access Board in the development of proposed Accessibility Guidelines. Interested parties should be afforded an to opportunity comment on the